

Sec. 38-38. FP, floodplain district.

Article I. General Provisions

(a) *Purpose.* The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protections and relief, and the impairment of the tax base by:

- (1) Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- (2) Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding.
- (3) Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or floodproofed against flooding and flood damage.
- (4) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

(b) *Applicability.* These provisions shall apply to all lands within the jurisdiction of the City of Falls Church and identified as being in the one-hundred-year floodplain by the Federal Insurance Administration.

(c) *Compliance and liability.*

- (1) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this section and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this section.
- (2) The degree of flood protection sought by the provisions of this section is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may increase by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This section does not imply that districts outside the floodplain district, or that land uses permitted within such district will be free from flooding or flood damages.
- (3) This section shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.

(d) *Abrogation and greater restrictions.* This section supersedes any ordinance currently in effect in flood-prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this section.

(e) *Severability.* If any section, subsection, paragraph, sentence, clause, or phrase of this section shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this section. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this section are hereby declared to be severable.

(f) *Penalties.*

- (1) Failure by any person to comply with any of the requirements or provisions of this section shall, upon conviction, constitute a misdemeanor of the first class punishable by a fine of up to two thousand five hundred dollars (\$2,500.00) or up to twelve (12) months in jail, or both.
- (2) In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this section. The imposition of a fine or penalty for any violation of, or noncompliance with, this section shall not excuse the violation or noncompliance

to permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in violation of this section may be declared by the city to be a public nuisance or unsuitable for human occupancy and abatable as such. Flood insurance may be withheld from structures constructed in violation of this section. If any violation of this section is not corrected within thirty (30) days of issuance of a citation, the city may take action to correct such violations and assess to the property owner the costs and fees incurred therein.

Article II. Definitions

- (a) *Base flood/one-hundred-year flood.* A flood that, on the average, is likely to occur once every one hundred (100) years (i.e., that has a one (1) percent chance of occurring each year, although the flood may occur in any year).
- (b) *Base flood-elevation (BFE).* The Federal Emergency Management Agency designated one-hundred-year water surface elevation.
- (c) *Board of zoning appeals.* The board appointed to review appeals made by individuals with regard to decisions of the zoning administrator in the interpretation of this section, or requests for variances to this section.
- (d) *Development.* Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, street paving, excavation or drilling operations or storage of equipment or materials.
- (e) *Flood.*
 - (1) A general and temporary condition of partial or complete inundation of normally dry areas from:
 - a. The overflow of inland waters.
 - b. The unusual and rapid accumulation of runoff of surface waters from any source.
 - (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or by some similarly unusual and unforeseeable event which results in flooding.
- (f) *Flood-prone area.* Any land area susceptible to being inundated by water from any source.
- (g) *Floodplain.*
 - (1) A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation;
 - (2) An area subject to the unusual and rapid accumulation or runoff of surface water from any source.
- (h) *Floodway.* The designated area of the floodplain required to carry and discharge flood waters of a given magnitude. For the purpose of this section, the floodway shall be capable of accommodating a flood of the one-hundred-year magnitude free from encroachment.
- (i) *Historic structure.* Any structure that is:
 - (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements of individual listing on the National Register); or is designated for protection by the city as a historic structure;
 - (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic structures and places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior, or
 - b. Directly by the Secretary of the Interior in states without approved programs.
- (j) *Manufactured home*. A structure subject to federal regulations, which is transportable in one (1) or more section(s); is eight (8) body feet or more in width and forty (40) body feet or more in length in the traveling mode, or is three hundred twenty (320) or more square feet when erected on site; is built on a permanent chassis; is designated to be used as a single family dwelling, with or without a permanent foundation when connected to the required facilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.
- (k) *Manufactured home park subdivision*. A parcel (or contiguous parcels) of land divided into two (2) or more lots for rent or sale.
- (l) *New construction*. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- (m) *Recreational vehicle*. A vehicle which is:
 - (1) Built on a single chassis;
 - (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
 - (3) Designated to be self-propelled or permanently towable by a light duty truck; and
 - (4) Designed primarily not for use as a permanent but as temporary living quarters for recreational camping, travel, or seasonal use.
- (n) *Start of construction*. The date the building permit was issued, provided that actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings; such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration on any wall, ceiling, floor or other structural part of a building, whether or not the alteration affects the external dimensions of the building.
- (o) *Substantial damage*. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.
- (p) *Substantial improvement*. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market

value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Article III. Establishment of Zoning Districts

(a) Description of districts.

(1) *Basis of districts.* The various floodplain districts shall include areas subject to inundation by waters of the one-hundred-year flood. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) for the city prepared by the Federal Emergency Management Agency (FEMA), dated July 16, 2004, as amended.

a. Floodway District (FP-1). The Floodway District (FP-1) is delineated, for the purposes of this section, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one-hundred-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this district are specifically defined in Table 2 of the above referenced Flood Insurance Study and shown on the most recent accompanying Flood Insurance Rate Map issued by FEMA.

b. Flood-Fringe District (FP-2). The Flood-Fringe District (FP-2) shall be that area of the one-hundred-year floodplain not included in the Floodway District. The basis for the outermost boundary of the district shall be the one-hundred-year flood elevations contained in the flood profiles of the above referenced Flood Insurance Study and as shown on the accompanying Flood Insurance Rate Map.

c. Special Floodplain District. The Special Floodplain District (FP-3) shall be those areas of the one-hundred-year floodplain for which one-hundred-year flood elevations have been provided in the above referenced Flood Insurance Study, but for which no floodway has been delineated. The FP-3 areas are shown on the accompanying Flood Insurance Rate Map.

(2) Overlay concept.

a. The floodplain districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

b. In any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions shall apply, except that relevant provisions of the floodplain districts must be satisfied.

c. In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

(b) *Official zoning map.* The boundaries of the floodplain districts are established as shown on the Flood Insurance Rate map which is declared to be a part of this section and which shall be kept on file by the zoning administrator.

(c) *District boundary changes.* The delineation of any of the floodplain districts may be revised by the city council where natural or manmade changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or

other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

(d) *Interpretation of district boundaries.* Initial interpretations of the boundaries of the floodplain districts shall be made by the zoning administrator. Should a dispute arise concerning the boundaries of any of the districts, the board of zoning appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the board and to submit his own technical evidence if he so desires.

Article IV. District Provisions

(a) *General provisions.*

(1) *Permit requirement.* All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a floodplain permit which shall be issued by the zoning administrator after review for compliance. An elevation certificate is to be completed based upon as-built conditions for residential construction and for elevated nonresidential construction in the floodplain. A floodproofing certificate is to be completed for nonresidential construction in the floodplain. Copies of these are to be kept on file by the zoning administrator.

Such uses, activities and development shall be undertaken only in strict compliance with the provisions of the ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code, the Falls Church Subdivision Regulations, and the Chesapeake Bay Act. Prior to the issuance of any such permit, the zoning administrator shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodway of any watercourse, drainage ditch, or any other drainage facility or system.

(2) *Alteration or relocation of watercourse.* Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Army Corps of Engineers, the Virginia State Water Control Board, and the Virginia Marine Resources Commission. Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Insurance Administration.

(3) *Site plans and permit applications.* All applications for development in the floodplain district and all building permits issued for the floodplain shall incorporate the following information:

- a. For structures to be elevated, the elevation of the lowest floor (including basement).
- b. For structures to be floodproofed (nonresidential only), the elevation to which the structure will be floodproofed.
- c. The elevation of the one-hundred-year flood.
- d. Topographic information showing existing and proposed ground elevations.

(4) *Manufactured homes.* Manufactured homes that are placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and (shall) be securely anchored to an adequately anchored foundation system to resist floatation collapse and lateral movement.

(5) *Recreational vehicles.*

- a. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
- b. Recreational vehicles must meet the permit requirements for placement and the elevation and anchoring requirements for manufactured homes above.
- c. The following are prohibited uses:
 - 1. Continual storage for more than one hundred eighty (180) days.
 - 2. Use as temporary living quarters.
 - 3. Conversion to a permanent dwelling unit.
- (6) *Subdivision proposals.* All new subdivision proposals and other proposed developments greater than fifty (50) lots or five (5) acres, whichever is the lesser, shall include within such proposals base flood elevation data.
- (b) *Floodway district.* In the floodway district no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the one-hundred-year flood elevation.
- (c) *Flood fringe and special floodplain districts.* In the flood fringe and special floodplain districts, the development and/or use of land shall be permitted in accordance with the regulations of the underlying area provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in the Virginia Uniform Statewide building Code and all other applicable codes and ordinances. Within the special floodplain district, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the one-hundred-year flood more than one (1) foot at any point.
- (d) *Design criteria for utilities and facilities.*
 - (1) *Sanitary sewer facilities.* All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
 - (2) *Water facilities.* All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.
 - (3) *Drainage facilities.* All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and onsite waste disposal sites. The city council may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
 - (4) *Utilities.* All utilities, such as, but not limited to, gas lines, electrical and telephone systems being placed in flood-prone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.

(5) *Streets and sidewalks.* Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

Article V. District Permitted Uses

(a) *Permitted uses.*

(1) *Floodway District (FP-1).* In the floodway district, no development shall be permitted if the proposed development results in any increase in the flood elevation.

a. Permitted uses. The following permitted uses and activities not otherwise prohibited by law are permitted provided that they are in compliance with the provisions of the underlying district and provided they do not require structures, fill, or storage of materials and equipment.

1. Outdoor gardens for plants under two (2) feet in height.
2. Public and private recreational uses and activities such as parks, day camps, picnic grounds, hiking and biking trails.
3. Accessory residential uses such as yard areas, gardens, play areas and parking and loading areas.
4. Utilities and public facilities and improvements including, but not limited to, railroads, streets, bridges, transmission lines, pipe lines and other similar or related uses.

b. Conditional uses. None.

c. Prohibited uses.

1. Storage of materials and equipment that are toxic, flammable or explosive.
2. Solid waste, landfills, dumps, junkyards, outdoor storage of vehicles and/or materials.
3. The filling of marshlands or wetlands.
4. The damming or relocation of any watercourse that will result in any downstream increase in flood levels during the one-hundred-year flood.
5. The construction or storage of any object subject to flotation or movement during flooding.
6. Commercial parking or loading areas.
7. Manufactured homes and recreational vehicles.

(2) *Flood Fringe District (FP-2).*

a. Permitted uses. Development not otherwise prohibited by law in the flood fringe district shall be permitted in accordance with the regulations of the underlying district provided that all such development shall be undertaken in strict compliance with the floodproofing and related provisions contained in the Virginia Uniform Statewide Building Code and all applicable codes and ordinances.

b. Conditional uses. None.

c. Prohibited uses.

1. Storage of materials and equipment that are toxic, flammable or explosive.
2. Solid waste, landfills, dumps, junkyards, outdoor storage of vehicles and/or materials.
3. The filling of marshlands or wetlands.
4. The damming or relocation of any watercourse that will result in any downstream increase in flood levels during the one-hundred-year flood.
5. The construction or storage of any object subject to flotation or movement during flooding.
6. There shall be no filling of land to make a building lot for the purposes of constructing a residential dwelling.
7. Manufactured homes and recreational vehicles.

d. Other requirements.

1. The lowest floor elevation, including basement, shall be one (1) foot or more above the one-hundred-year flood elevation.

2. All electrical water heaters, electric furnaces, and other electrical installations shall be prohibited below an elevation of one (1) foot above the one-hundred-year flood elevation.

3. Electrical distribution panels shall be at least three (3) feet above the one-hundred-year flood elevation.

(3) *Special Floodplain District (FP-3).*

- a. Permitted uses. Development not otherwise prohibited by law in the special floodplain district shall be permitted in accordance with the regulations of the underlying district provided that all such development shall be undertaken in accordance with the flood proofing and related provisions contained in the Virginia Uniform Statewide Building Code and all applicable codes and ordinances.

- b. Conditional uses. None.

- c. Prohibited uses.

1. Storage of materials and equipment that are toxic, flammable or explosive.

2. Solid waste, landfills, dumps, junkyards, outdoor storage of vehicles and/or materials.

3. The filling of marshlands.

4. The damming or relocation of any watercourse that will result in any downstream increase in flood levels during the one-hundred-year flood.

5. The construction or storage of any object subject to flotation or movement during flooding.

6. There shall be no filling of land to make a building lot for the purposes of constructing a residential dwelling.

7. Manufactured homes and recreational vehicles.

- d. Other requirements.

1. The lowest floor elevation, including basement, shall be one (1) foot or more above the one-hundred-year flood elevation.

2. All electrical water heaters, electric furnaces, and other electrical installations shall be prohibited below an elevation of one (1) foot above the one-hundred-year flood elevation.

3. Electrical distribution panels shall be at least three (3) feet above the one-hundred-year flood elevation.

Article VI. Variances: Factors to be Considered

In passing upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the one-hundred-year flood elevation. No variance shall be granted for any proposed use, development, or activity within any special floodplain district that would, together with all other existing and anticipated development, increase the one-hundred-year flood more than one (1) foot at any point.

- (2) The danger that materials may be swept on to other lands or downstream to the injury of others.

- (3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

- (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

- (5) The importance of the services provided by the proposed facility to the community.
- (6) The requirements of the facility for a waterfront location.
- (7) The availability of alternative locations not subject to flooding for the proposed use.
- (8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- (9) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- (10) The safety of access by ordinary and emergency vehicles to the property in time of flood.
- (11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (12) The repair or rehabilitation of historic structures upon a determination that proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (13) Such other factors which are relevant to the purposes of this chapter.

The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

The board of zoning appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one-hundred-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial reports submitted to the Federal Insurance Administrator.

Article VII. Existing Structures in Floodplain Districts

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- (1) Existing structures in the floodway district shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the one-hundred-year flood elevation.
- (2) Any modifications, alterations, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than fifty (50) percent of its market value before addition or alteration, shall be elevated and/or floodproofed to the greatest extent possible.
- (3) The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its locations in a floodplain area, to an extent or amount of fifty (50) percent or more of its market value before addition or alteration shall be undertaken

only in full compliance with the provisions of this chapter and the Virginia Uniform Statewide Building Code.

(4) Existing structures in the special floodplain district shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses that the proposed expansion or enlargement, together with all other existing and anticipated development, will not cause more than a one (1) foot increase in the one-hundred year flood elevation.

(Ord. No. 994, 1-11-82; Ord. No. 1001, 3-22-82; Ord. No. 1278, 10-10-89; Ord. No. 1426, 12-16-92; Ord. No. 1763, 6-28-04)